

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE AMERICAN REALTY CAPITAL
PROPERTIES, INC. LITIGATION

Civil Action No.: 1:15-mc-00040-AKH

CLASS ACTION

This Document Relates To:
ALL ACTIONS

ORAL ARGUMENT REQUESTED

JET CAPITAL MASTER FUND, L.P., et al.,
Plaintiffs,

Civil Action No. 1:15-cv-00307-AKH

vs.

AMERICAN REALTY CAPITAL PROPERTIES,
INC., et al.,
Defendants.

**DECLARATION OF DAVID MARCOU IN SUPPORT OF
DEFENDANTS' MOTION TO EXCLUDE OPINIONS OFFERED BY PLAINTIFFS'
PROFFERED EXPERT STEVEN P. FEINSTEIN**

I, DAVID MARCOU, hereby declare as follows:

1. I am an associate with the law firm Milbank LLP, counsel to Defendants American Realty Capital Properties, Inc. and ARC Properties Operating Partnership, L.P. in the above-captioned actions. I am a member in good standing of the bar of the State of New York and of this Court.
2. Attached to this declaration as **Exhibit A1** is a true and correct copy of the March 15, 2019 Declaration of Dr. Steven P. Feinstein addressing the issue of loss causation.
3. Attached to this declaration as **Exhibit A2** is a true and correct copy of the May 3, 2019 Report of Dr. Steven P. Feinstein addressing the issue of damages.

4. Attached to this declaration as **Exhibit A3** is a true and correct copy of the March 15, 2017 Report of Dr. Steven P. Feinstein addressing the issue of market efficiency.

5. Attached to this declaration as **Exhibit A4** is a true and correct copy of an excerpt of the deposition transcript of Dr. Steven P. Feinstein, testifying in the above-captioned actions on June 15, 2017.

6. Attached to this declaration as **Exhibit A5** is a true and correct copy of an excerpt of the deposition transcript of Dr. Steven P. Feinstein, testifying in the above-captioned actions on July 17, 2019.

7. Attached to this declaration as **Exhibit A6** is a true and correct copy of an excerpt of the deposition transcript of Dr. Steven P. Feinstein, testifying in the above-captioned actions on July 18, 2019.

8. Attached to this declaration as **Exhibit A7** is a true and correct copy of an excerpt of the rough deposition transcript of Dr. Steven P. Feinstein, testifying in the above-captioned actions on July 25, 2019.

9. Attached to this declaration as **Exhibit A8** is a true and correct copy of ARCP's Form 8-K filed with the U.S. Securities and Exchange Commission on October 29, 2014.

10. Attached to this declaration as **Exhibit A9** is a true and correct copy of a transcript of a conference call hosted by ARCP held on October 29, 2014.

11. Attached to this declaration as **Exhibit A10** is a true and correct copy of a press release regarding the trial of Brian Block issued by the U.S Attorney's Office for the Southern District of New York on June 30, 2017.

12. Attached to this declaration as **Exhibit A11** is a true and correct copy of an excerpt of the transcript of the sentencing in *United States v. Block*, No. 16-cr-595 (S.D.N.Y. November 8, 2017).

13. Attached to this declaration as **Exhibit A12** is a true and correct copy of the June 3, 2019 Report of Dr. Allan W. Kleidon addressing the issues of loss causation and damages.

14. Attached to this declaration as **Exhibit A13** is a true and correct copy of the May 3, 2019 Report of Dr. Zachary Nye addressing the issues of loss causation and damages.

15. Attached to this declaration as **Exhibit A14** is a true and correct copy of a Delaware State News article entitled "Leo Strine Stepping Down Later This Year" dated July 8, 2019.

16. Attached to this declaration as **Exhibit A15** is a true and correct copy of a Law360 article entitled "Looking Back At Some of Strine's Notable Opinions" dated July 8, 2019.

17. Attached to this declaration as **Exhibit A16** is a true and correct copy of the June 3, 2019 Report of Dr. Walter N. Torous addressing the issue of market efficiency.

18. Attached to this declaration as **Exhibit A17** is a true and correct copy of "Federal Securities Acts and Areas of Expert Analysis," by Nicholas Crew, et al., Chapter 27 of *The Litigation Services Handbook: The Role of the Financial Expert*, 6th edition, edited by Roman Weil, Daniel Lentz, and Elizabeth Evans, John Wiley & Sons, Inc., 2017.

19. Attached to this declaration as **Exhibit A18** is a true and correct copy of a Bank of America Merrill Lynch analyst report dated October 29, 2014.

20. Attached to this declaration as **Exhibit A19** is a true and correct copy of a Capital One analyst report dated October 29, 2014.

21. Attached to this declaration as **Exhibit A20** is a true and correct copy of a JP Morgan analyst report dated October 29, 2014.

22. Attached to this declaration as **Exhibit A21** is a true and correct copy of a JMP Securities analyst report dated October 29, 2014.

23. Attached to this declaration as **Exhibit A22** is a true and correct copy of a document bearing Bates number ARCP_DA_TWINSECURITIES_00000876.

24. Attached to this declaration as **Exhibit A23** is a true and correct copy of a document bearing Bates number ARCP_JET00025794.

25. Attached to this declaration as **Exhibit A24** is a true and correct copy of an excerpt of Dr. Steven P. Feinstein's November 23, 2015 Rebuttal Report issued in the matter *In re: Petrobras Securities Litigation*, 1:14-cv-09662-JSR, ECF No. 338-8.

26. Attached to this declaration as **Exhibit A25** is a true and correct copy of ARCP's Form 8-K filed with the U.S. Securities and Exchange Commission on December 30, 2014.

27. Attached to this declaration as **Exhibit A26** is a true and correct copy of an excerpt of the transcript of a hearing held on August 24, 2017 in the above-captioned action, *In re American Realty Capital Properties, Inc.*, No. 1:15-mc-00040-AKH, ECF No. 516.

28. Attached to this declaration as **Exhibit A27** is a true and correct copy of an excerpt of the deposition transcript of Dr. Steven P. Feinstein, testifying on August 10, 2017 in the action *Ohio Pub. Employees Ret. Sys. v. Fed. Home Loan Mortg. Corp.*, No. 4:08-cv-00160, ECF No. 444-3.

29. Attached to this declaration as **Exhibit A28** is a true and correct copy of an article appearing in St John's Law Review entitled "The 'Less Than' Efficient Capital Markets Hypothesis: Requiring More Proof from Plaintiffs in Fraud-on-the-Market Cases" by Paul Ferrillo, Frederick Dunbar, and David Tabak.

30. Attached to this declaration as **Exhibit A29** is a true and correct copy of a NERA Economic Consulting article entitled “What Should We Expect When Testing for Price Response to News in Securities Litigation?” by David Tabak.

31. Attached to this declaration as **Exhibit A30** is a true and correct copy of an excerpt transcript of the *Daubert* hearing held on September 11, 2014 in the action *In re: Groupon, Inc. Securities Litigation*, No. 1:12-cv-02450, ECF No. 271-1.

32. Attached to this declaration as **Exhibit A31** is a true and correct copy of the March 15, 2019 Report of Dr. Zachary Nye addressing the issue of market efficiency.

33. Attached to this declaration as **Exhibit A32** is a true and correct copy of an excerpt of Dr. Steven P. Feinstein's October 23, 2015 Report issued in the matter *In re: Petrobras Securities Litigation*, 1:14-cv-09662-JSR, ECF No. 264-1.

34. Attached to this declaration as **Exhibit A33** is a true and correct copy of an excerpt of Dr. Steven P. Feinstein's June 30, 2017 Report issued in the matter *In re: Eletrobras Securities Litigation*, 1:15-cv-05754-JGK, ECF No. 83-1.

35. Attached to this declaration as **Exhibit A34** is a true and correct copy of a NERA Economic Consulting article entitled "Use and Misuse of Event Studies to Examine Market Efficiency" by David Tabak.

36. Attached to this declaration as **Exhibit A35** is a true and correct copy of an excerpt of Dr. Steven P. Feinstein's December 16, 2016 Declaration issued in the matter *Ohio Pub. Employees Ret. Sys. v. Fed. Home Loan Mortg. Corp.*, No. 4:08-cv-00160, ECF No. 444-6.

37. Attached to this declaration as **Exhibit A36** is a true and correct copy of *Applied Statistics For Public Policy* by Brian P. Macfie and Philip M. Nufrio.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 5, 2019.



David Marcou